



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 10009, Richmond, Virginia 23240
Fax (804) 698-4500 TDD (804) 698-4021
www.deq.state.va.us

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

VWP Individual Permit Number 02-1835

Issuance Date: August 25, 2003
Effective Date: August 22, 2003
Expiration Date: August 22, 2018

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with § 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (Board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The Board finds that the effect of the impacts, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Town of Orange, Virginia
Address: 119 Belleview Avenue, Orange, VA 22960-1401
Activity Location: Orange County, Virginia
Activity Description: The operation of a water impoundment and supply intake on the Rapidan River in Orange County, Virginia.

The permitted activity shall be in accordance with this Permit Cover Page, the Part I - Special Conditions, and the Part II - General Conditions.

Allen Delinsky
Director, Department of Environmental Quality

August 22, 2003
Date

Part I - Special Conditions

A. Authorized Activities

This permit authorizes:

1. The permanent placement of fill within no more than 2,020 square feet of the Rapidan River for the purposes of constructing a dam and fish passage.
2. The permanent placement of riprap material within no more than 4,000 square feet of the Rapidan River, below the ordinary water level, for the purposes of stabilizing a dam, fish passage, and stream banks.
3. The temporary placement of fill within no more than 4,200 square feet of the Rapidan River for construction of temporary coffer dams.
4. The excavation of fill material within no more than 1,100 square feet of the Rapidan River for the removal of the old diversion dam.
5. The excavation of fill within no more than 22,500 square feet of the Rapidan River for the removal of construction access areas.
6. The withdrawal of surface water from the Rapidan River, not to exceed a *maximum daily* withdrawal of 2.6 million gallons, a *maximum instantaneous* withdrawal rate of 1,800 gallons per minute, and a *maximum annual* withdrawal of 730 million gallons. Withdrawals shall be authorized only when the permit conditions in Part I, Section D are met.
7. The temporary use of mechanical equipment in surface waters when conducted according to the permit conditions herein.

B. Standard Project Conditions

1. The project activities shall be adhered to as described in the original Joint Permit Application, in responses to requests for information, in any subsequent submittals approved by DEQ, and in all permit conditions.
2. This permit is valid for **15 years** from the date of issuance. A new permit may be necessary for the continuance of the authorized activities or any permit requirement that has not been completed, including compensation provisions. An original permit term or re-issuance permit term, plus any extensions granted, cannot exceed the maximum of 15 years.

Part I - Special Conditions

Page 2 of 11

3. The permittee shall notify the DEQ-Central Office of any additional impacts to surface waters, including wetlands, or any change to the type of surface water impacts associated with this project. Any additional impacts to surface waters, including wetlands, or any change to the type of surface water impacts, shall be subject to individual permit review and/or modification of this permit. Compensation may be required.
4. The activities authorized by this permit shall be executed in a such a manner as to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code of Virginia.
5. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water, or the activity is otherwise authorized by this permit. Culverts placed in streams shall be installed to maintain low flow conditions.
6. The activity shall not impede the passage of normal or expected high flows and the structure or discharge shall withstand expected high flows.
7. All excavation, dredging, and/or filling in surface waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases.
8. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.
9. All construction, construction access (for example, cofferdams, sheetpiling, and causeways), and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this permit.
10. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. In accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, appropriate best management practices (BMP) shall be deemed suitable treatment prior to discharge into surface waters.
11. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
12. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

Part I - Special Conditions

Page 3 of 11

13. Machinery in temporarily impacted surface waters shall be placed on mats or geotextile fabric, or other suitable measures shall be implemented to minimize soil disturbance to the maximum extent practical. Mats or fabrics shall be removed as soon as the work is complete.
14. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to surface waters. These controls shall remain in place until the area stabilizes.
15. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
16. Construction monitoring, compensation success monitoring, and water withdrawal monitoring shall be conducted in accordance with the permit conditions in Part I, Sections D, E, and F.

C. Stream Modification and Streambank Protection

1. Redistribution of existing stream substrate for erosion control purposes is prohibited.
2. All material removed from the stream substrate shall not be disposed of in surface waters.
3. If applicable, riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
4. For streambank protection activities, structures and backfill shall be placed as close to the streambank as practical. No material shall be placed in excess of the minimum necessary for erosion protection.
5. All streambank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practical.
6. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

Part I - Special Conditions

D. Water Withdrawals

1. The water withdrawal intake structure's screens shall be designed, constructed, and maintained to prevent the impingement or entrapment of fish. Should the screens result in excessive fish mortality, as determined by the State Water Control Board, the permittee shall undertake measures to eliminate mortality.
2. Water withdrawal rates and volumes shall comply with the limits set forth in Part I, Section A.5.
3. The permittee shall monitor stream flow on the Rapidan River by monitoring provisional data from the USGS Culpeper stream gage (Gage #01667500).
4. From July 1st through November 15th of each permit year, the permittee shall record withdrawal data using the table in Attachment A of this permit.

When the previous year's total water withdrawal was *less than or equal to* 511 million gallons: The permittee shall enact mandatory conservation whenever the 14-day rolling average stream flow of the Rapidan River at the USGS Culpeper gage is, or falls below, 44 cubic feet per second (cfs). Mandatory conservation may be lifted once the 14-day rolling average at the Culpeper gage exceeds 44 cfs.

When the previous year's total water withdrawal was *greater than* 511 million gallons: The permittee shall enact mandatory conservation whenever the 14-day rolling average stream flow of the Rapidan River at the USGS Culpeper gage is, or falls below, 63 cubic feet per second (cfs). Mandatory conservation may be lifted once the 14-day rolling average at the Culpeper gage exceeds 63 cfs.

A 14-day rolling average shall be calculated by recording the stream flow rate at the Culpeper gage once per day, then adding 14 consecutive days of stream flow rates and dividing that sum by 14.

Mandatory conservation measures shall consist of those outlined in Condition 2 in the Town of Orange Ordinance Number 02-08, Section 74-57(b), or the most current Town ordinances and/or conservation plans. Such ordinances/plans shall, at a minimum, specifically prohibit the watering of existing lawns during mandatory conservation periods. Conservation measures shall apply to **all users** of water withdrawn under this permit.

5. No more than 1.3 million gallons per day may be sold to out-of-basin customers.

Part I - Special Conditions

Page 5 of 11

E. Compensation

General:

1. The final compensation plan as approved by DEQ shall be an enforceable requirement of this permit (see Part I, Section F). Any deviation from the approved plan must be submitted to DEQ-Central Office and approved by DEQ in advance of implementation.
2. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final compensation plan.
3. Rooted seedlings or cuttings shall originate from a local nursery or be adapted to local conditions. Vegetation shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within approximately 200 miles from the project site.
4. Undesirable plant species shall be identified and controlled as described in the abatement and control plan for undesirable plant species, such that they are not dominant species or do not change the desired community structure. The abatement and control plan shall include procedures to notify DEQ-Central Office of any undesirable plant species occurrences, methods of removal, and successful control.
5. Herbicides or algacides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by DEQ. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.
6. Point sources of stormwater runoff shall be prohibited from entering any compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.
7. If the compensation area fails to be established as per the specified performance criteria, the reasons for this failure shall be determined, and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ-Central Office for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to ensure success, the monitoring period shall be extended until success is achieved.

Stream Compensation:

8. The permittee shall compensate for approximately 24,520 square feet of stream impacts along the Rapidan River through streambed and streambank stabilization/restoration activities and riparian buffer restoration.

(0.5 acres)

Part I - Special Conditions

Page 6 of 11

9. The success of the stream restoration shall be based on maintaining stream channel and streambank stabilization and riparian vegetation in accordance with the success criteria included in the approved final compensation plan.
10. Monitoring shall be required for **two consecutive years** once stream compensation construction activities have been completed. If the stream is found to be unstable or the riparian vegetation planting is not successful in the second monitoring year, then additional annual monitoring shall be required until all criteria have been successfully satisfied in accordance with the approved final compensation plan (see also Part I, Section F).
11. Photographs shall be taken at the compensation site from the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events, and at least one upstream and one downstream view shall be taken. Photographs shall be taken prior to compensation area construction activities, during instream and riparian construction activities, within **one week** of completion of activities, and **in August or September** of each monitoring year. Photographs shall be appropriately labeled as described in Part I, Section F.7.b.
12. The establishment of vegetation shall be indicated by percent cover monitored in August or September during each monitoring year as detailed in the final compensation plan.
13. The permittee shall document all wildlife or signs of wildlife observed at the compensation area during each monitoring event.
14. The permittee shall have the authority to use heavy equipment within the stream channel during restoration activities when site conditions prohibit access from the streambank or existing filled areas. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible. All heavy equipment shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable. Mats shall be removed as soon as the work is complete.
15. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation construction shall be completed in the dry whenever practicable.
16. Bank slopes shall be stabilized to reduce stream bank erosion, where practical.

Part I - Special Conditions

Page 7 of 11

17. Riparian buffer restoration shall include the planting of a variety of native species currently growing in the site area, a minimum 10 feet from the edge of the stream on either side, where practical.

F. Required Notifications and Submittals

General:

1. All written communications required by this permit shall be submitted to the Virginia Department of Environmental Quality, Office of Water Permits, 629 East Main Street, Richmond, Virginia 23219 (DEQ-Central Office). The permit number shall be included on all correspondence.
2. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf with the authority to bind the applicant. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above; **and**
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ prior to or together with any separate information, or applications to be signed by an authorized representative.

3. All submittals required by this permit, and signed by the applicant, agent, or permittee, shall contain the following certification statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
4. Any fish kills or spills of fuels or oils shall be reported **immediately** upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through

Part I - Special Conditions

Page 8 of 11

Friday, DEQ Central Office shall be notified at 804-698-4000; otherwise, the Virginia Department of Emergency Management shall be notified at 1-800-468-8892.

5. Violations of Virginia Water Quality Standards shall be reported within **24 hours** to DEQ-Central Office at 804-698-4000.
6. DEQ-Central Office shall be notified in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance, or to change the location of any structure, are prohibited until approved by DEQ.

Construction:

*not w/in 30 days
but did get
notice 11/30/04 ✓*

7. DEQ-Central Office shall be notified in writing within **30 days** following the completion of all construction activities in permitted impact areas authorized under this permit. The notification shall include the following, as appropriate:
 - a. A summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions.
 - b. A labeled site map depicting all impact areas and photo locations. The photographs shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. Photographs shall be taken within **one week** of construction completion. Each photograph shall be labeled to include the following information: permit number, impact area name (i.e. temporary coffer dam), date and time of the photograph, name of the person taking the photograph, photograph orientation (i.e. north), and a description of what the photograph captures.

Compensation:

8. DEQ-Central Office shall be notified in writing at least **ten days** prior to the initiation of compensation construction activities authorized under this permit so that inspections of the project can be planned, if deemed necessary. The notification shall include a projected schedule for completing the work.
9. The permittee shall submit a final stream compensation plan within a minimum of **30 days** before compensation site construction. The final plan shall include (at a minimum):

Part I - Special Conditions

Page 9 of 11

- a. The goals and objectives of the plan, in terms of replacement of functions and values and replacement of area (expressed in square feet).
 - b. A detailed description of the stream bed and streambank stabilization activities (i.e., type of vane, root wad, or other instream structure, location).
 - c. Riparian buffer plantings (i.e., scheme, species, width).
 - d. Structures and features necessary for the success of the site.
 - e. The schedule for compensation site construction.
 - f. A location map, including latitude and longitude (to the nearest second) at the center of the site.
 - g. A site access plan.
 - h. A monitoring plan which provides 1) the proposed success criteria for streambed and streambank stabilization and riparian buffer success, and 2) the monitoring goals. Monitoring goals shall include physical stream measurements and/or surveys to determine stability of the stream, the location of photo stations, and the location of vegetation sampling points.
 - i. An abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control.
 - j. An erosion and sedimentation control plan.
10. Construction shall be performed in accordance with the submitted plan and specifications. Any changes to the final compensation plan and specifications in permitted areas shall be submitted to DEQ-Central Office prior to construction activities.
11. A stream compensation monitoring report shall be submitted within **30 days** of completing the stream restoration work. The report shall include, the following:
- a. A description of the work completed at the compensation site, including a location map that identifies the compensation area.
 - b. Properly labeled photographs as described in Part I, Section F.7.b.

Part I - Special Conditions

Page 10 of 11

- c. Approximate stream dimensions *before and after* compensation work to include average width, length within the compensation area, average water depth, average bank height, and average bank slope. This information may be provided on a technical drawing of the compensation area.

12. Subsequent stream compensation monitoring reports shall be submitted by **November 30th** of each monitoring year. The report shall include, the following:

- a. A location map that identifies the compensation area.
- b. Properly labeled photographs as described in Part I, Section F.7.b.
- c. Any changes in stream dimensions since completion of compensation site work, such as those resulting from storm events. This information may be provided on a technical drawing of the compensation site area.
- d. Discussion of the success and/or failure of planted vegetation, and the establishment of voluntary vegetation.
- e. Discussion of stream bank and/or channel stabilization.
- f. Discussion of wildlife or signs of wildlife observed at the compensation site.
- g. Discussion of alterations, maintenance, and corrective actions conducted at the stream compensation site.

Water Withdrawal:

13. The permittee shall report the water withdrawal data to DEQ-Central Office by **January 31st** of the year following each permit year by using the table provided in Attachment A of this permit. The data shall include: date and time, stream flow of Rapidan River at Culpeper gage (cfs), 14-day rolling average stream flow at Culpeper gage (cfs), indication of whether mandatory conservation is in effect, and the initials of the person recording the data.
14. Within **90 days** of permit issuance the permittee shall submit to DEQ-Central Office a stream flow monitoring plan that describes what measures the permittee will implement to estimate the stream flow in the Rapidan River in the event that the Culpeper gage is damaged, disabled, or discontinued.
15. Applicable to users whose average daily withdrawal during any single month exceeds 10,000 gallons per day: The permittee shall report water withdrawals to DEQ-Central

released ✓
from further
monitoring
10/3/05

(Jan 30/71)
in letter

Part I - Special Conditions

Page 11 of 11

Office by **January 31st** of the next year, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 et seq.). The annual monitoring report shall contain the following information: the permittee's name and address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement.

Alternatively, for permittees subject to the Virginia Department of Health (VDH) Waterworks Regulations, annual reports to DEQ may include the source and location of water withdrawals, the type of use for the water withdrawn, and reference to the reports filed with VDH (containing monthly withdrawal data).

16. All records and information resulting from the monitoring activities required by this permit, including any records of USGS data and any maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.

Part II - General Conditions

Page 1 of 6

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any VWP permit violation is a violation of the law and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or re-issuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and re-issued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the Board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and re-issued, or terminated upon the request of the permittee or other person at the Board's discretion, or upon Board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Re-issuance, and Termination of VWP permits).

Part II - General Conditions

Page 2 of 6

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances,:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and;
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the Board any information which the Board may request to determine whether cause exists for modifying, revoking and re-issuing, or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the Board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as required by the Board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters other than pollutants, if required by this permit, shall be conducted according to approved analytical methods specified in these permit conditions. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including calibration and maintenance records, original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the Board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact location, and time of sampling or measurements;

Part II - General Conditions

Page 3 of 6

- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain-of-custody documentation.

H. Transferability

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and re-issuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

- 1. The current permittee notifies the Board within 30 days of the proposed transfer of the title to the facility or property;
- 2. The notice to the Board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
- 3. The Board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and re-issue the VWP permit.

I. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Re-opener

Each VWP permit shall have a condition allowing the re-opening of the permit for the purpose of modifying the conditions in order to meet new regulatory standards duly adopted by the Board. Cause for re-opening VWP permits may include substantial or material changes in project circumstances, on which the previous VWP permit was based, or special studies conducted by the Board or the permittee, which show material and substantial change

since the time the permit was issued and thereby justifying permit modification or revocation and re-issuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and re-issued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "re-opener clauses" in the VWP permit; or
6. When the Board determines that minimum instream flow levels resulting from the permittee's water withdrawal are detrimental to the instream beneficial use, when water withdrawal should be subject to further net limitations, or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the Board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. Civil and Criminal Liability

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Unauthorized Discharge of Pollutants

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;

Part II - General Conditions

Page 6 of 6

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; and
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
 - b. Filling or dumping
 - c. Permanent flooding or impounding
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions

R. Permit Extension

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit a written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit or permit re-issuance. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the Board to evaluate the extension request and to process a full VWP permit modification, or new VWP permit application, if required.